



Health and Human Services Agency California Office of HIPAA Implementation

POLICY MEMORANDUM

TO: Department Chief Deputy Directors
Department HIPAA Legal Counsel
Department HIPAA Coordinators

FROM: CALIFORNIA OFFICE OF HIPAA IMPLEMENTATION (CalOHI)

Title: Preemption Analyses of the Confidentiality of Medical Information Act (CMIA)	Number: PM 2002-12
Subject: HIPAA Preemption of State Health Information Privacy Law	Issue Date: November 8, 2002
Reference(s): Federal HIPAA Privacy Regulations [45 C.F.R. Parts 160, 164] Confidentiality of Medical Information Act [Civ. Code § 56, et. seq.]	Expiration Date: December 15, 2002

PURPOSE

To notify HIPAA covered and impacted State Departments of the draft HIPAA preemption analyses of the Confidentiality of Medical Information Act (CMIA) prepared by CalOHI and posted in the "Legal Issues" section of the CalOHI website at www.ohi.ca.gov. CalOHI would like Departments' HIPAA counsel to review this preemption analysis and to inform CalOHI of any corrections, comments, etc. **no later than December 15, 2002.**

BACKGROUND

State Departments that have been identified as either covered or impacted by HIPAA must be in compliance with federal privacy regulations promulgated pursuant to HIPAA by April 14, 2003. The HIPAA privacy regulations will, with some limited exceptions, preempt less stringent State health information privacy laws with the result being that the privacy laws State entities must comply with will be a combination of State and HIPAA privacy provisions. Accordingly, the identification and preemption analysis of all of the State's health information privacy laws is critical because covered and impacted State agencies will need to know which privacy laws to follow in order to comply with HIPAA, and to assure that State health information laws are interpreted uniformly vis à vis HIPAA by all HIPAA-covered/impacted State entities. Primary analysis of State health information privacy statutes that apply to all covered State entities is one of a number of activities CalOHI is undertaking to assist State entities in determining HIPAA/State health information privacy law preemption issues. In this regard, CalOHI has already completed draft analyses for the Information Practices Act (Civ. Code § 1798, et seq.) and the California Public Records Act (Gov. Code § 6250, et seq.). (See CalOHI Policy Memorandum 2002-06.)

DRAFT CMIA ANALYSIS

CMIA ANALYSIS

The Confidentiality of Medical Information Act is the State's primary law governing the use and disclosure of medical information by a variety of different individuals and entities. It regulates the protection of "medical information," i.e., individually identifiable information, in electronic or physical form in the possession of or derived from a provider of health care or a health care service plan regarding a patient's medical history, mental or physical condition, or treatment. It regulates the disclosure of medical information, including personal health information protected under HIPAA, by State agencies, because some State agencies are providers, but also because the CMIA cross-references the Information Practices Act. A draft preemption analysis of the provisions of the CMIA is posted in the "Legal Issues" section of the CalOHI website at www.ohi.ca.gov. In addition, separate links from this site contain a draft summary matrix of the preemption analysis of the CMIA, a draft list of the CMIA provisions that are preempted by HIPAA, and a draft list of the provisions of the CMIA that are more stringent than corresponding HIPAA provisions, and the complete text of the CMIA.

NEXT STEPS

The analyses of the CMIA will remain in draft form on the CalOHI website for a comment period, which will end January 15, 2003. At that time the analysis will become the final and official approved analysis of CalOHI. Thereafter, the analysis will be updated or corrected as needed and placed on the CalOHI website in final form for use in HIPAA implementation.

NEXT STEPS (Cont.) Please have your departments' HIPAA legal counsel carefully review these draft analysis documents and forward any comments, corrections, etc. to the attention of:

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Please forward all comments, corrections, etc. by December 15, 2002.

CONTACT

To obtain an electronic copy of this Policy Memorandum, please see the CalOHI website at: www.ohi.ca.gov. Please contact Stephen Stuart, CalOHI Staff Counsel, at the above address with any questions.

Original signed by Burt R. Cohen

BURT R. COHEN
Acting Director
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c: HIPAA Steering Committee Members
Steve Kessler, Department of Finance
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